IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

The Executive Engineer Vs. Smt.Rekha & ors.
Anupgarh

S.B.CIVIL MISC. APPEAL NO.379/1991

Against the award dated 29.07.1991 made by the Motor Accidents Claims Tribunal, Bikaner in MAC Case No.27/1985.

Date of judgment : 03.07.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.B.L.Bhati, Addl.Government Advocate for the appellants
Mr.Sudesh Gupta for the respondents-claimants

BY THE COURT:

Heard learned counsel for the parties and perused the material placed on record.

This appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the owners of the offending vehicle against the award dated 29.07.1991 made by the Motor Accidents Claims Tribunal, Bikaner in MAC Case No.27/1985.

Brief facts relevant for determination of the questions involved in this appeal are that the accident in question

occurred on 28.05.1985 at Bikaner to Gharsana Road when a jeep belonging to the appellants and bearing registration No.RJK 7154 capsized near Chhatargarh. The deceased Girish Kumar, aged 31 years , who was employed as Assistant Engineer in Command Area Development, IGNP and was travelling in the ill-fated jeep died because of the injuries sustained in the accident. Compensation was claimed by his wife aged 25 years and a minor son aged one year.

The non-applicants took the defence that accident occurred because of mechanical fault in the vehicle and not for any negligence on the part of the driver and hence they were not liable. It was also averred that the claimants were not entitled for any compensation because the matter of family pension had been forwarded and provisional pension had already been sanctioned; ex-gratia payment of Rs.7500/- has been made; and wife of the deceased Smt. Rekha Gupta has been accorded compassionate employment by the non-applicants as Lower Division Clerk after the death of her husband. The Tribunal framed the following issues for determination of the questions involved in the case:-

> "(1) आया विपक्षी सं. 1 बूईदास ने विपक्षी सं० 2 व 3 की सेवाओं में रहते हुए पुरानी व सड़क पर न चलने योग्य राजकीय वाहन जीप सं० आर.जे.के. 7154 को दिनांक 28-5-85 को बीकानेर से घड़साना रोड पर छतरगढ से 4 किलोमीटर पहले के स्थान पर जीप को लापरवाही एवं असावधानी से चलाकर दुर्घटना कारित की जिससे उस जीप में सवार राजकीय कार्य पर जाते हुए गिरीशकुमार

एईएन के चोटें आयी और उनसे श्री गिरीशकुमार की मृत्यु हो गई।

--प्रार्थीगण

(2) आया क्लेम के मद संख्या 11 में वर्णनानुसार प्रार्थीगण 12,71,355/-रूपये अथवा किसी कद्र न्यूनाधिक मुआवजे की राशि पाने के अधिकारी हैं।

-- प्रार्थीगण

(3) आया वाहन जीप सं. आर.जे.के. 7154 द्वारा उक्त दुर्घटना अचानक जीप का टायरोड़ टूट जाने और तकनीकी खराबी केकारण हुई और इस कारण विपक्षी संख्या 2 व 3 वाईकेरियसली लाइबल (vicarious liable) नहीं है ?

(4) प्रार्थीगण किस अनुतोष के पात्र है ?"

After evidence of the parties, learned Judge of the Tribunal proceeded to determine the questions involved in the case and while taking up issues No.1 and 3 together and after analyzing the evidence on record found that steering of the vehicle was found free by the witness AW-4 Mumtaj Ali who carried out mechanical inspection of the vehicle and it was found that its tie-rod had come out. Learned Judge of the Tribunal found from the evidence on record that the vehicle was an old one and the non-applicants had failed to examine roadworthyness of the vehicle before putting it on the road and they were directly responsible for the accident.

Taking up the question of quantification of compensation, learned Judge considered the submissions of the non-applicants that the wife of deceased was receiving Rs.400/- family pension; and although did not agree on the

contention about deducting the benefit received by the wife of the deceased because of her employment, nevertheless calculated the loss of dependency of the claimants only at Rs.500/- per month and then applying a multiplier of 27, calculated an amount of Rs.1,62,000/- as pecuniary compensation. Learned Judge further allowed Rs.15,000/- to the wife for loss of consortium and Rs.15,000/- to the son of the deceased for the loss of guidance of his father; and thereby adding Rs.30,000/- towards non-pecuniary compensation awarded a total amount of Rs.1,92,000/- as compensation to the claimants and further allowed 12% interest per annum from 11.12.1985 but then ordered that the claimants would not be entitled for interest for the period 15.10.1986 to 10.01.1990, i.e., the period spent in evidence by the claimants.

Assailing the award aforesaid, learned Addl. Government Advocate Mr.B.L.Bhati has strenuously contended that the accident occurred not on account of any fault on the part of the appellants and, therefore, the Tribunal was not justified in awarding compensation against the appellants. Learned counsel has further submitted that the Tribunal has seriously been in error in adopting a multiplier of 27 while quantifying pecuniary compensation; and according to the learned Addl. Government Advocate, even in

view of the age of deceased of 31 years, adopting of multiplier of 27 is not justified by any stretch of imagination.

Having heard learned Addl. Government Advocate and having gone through the record, this Court is clearly of opinion that this appeal remains bereft of substance and deserves to be dismissed.

So far the submission regarding negligence is concerned, the argument remains totally meritless. It has been clearly found on record that the appellants failed to take care to check the roadworthyness of the old vehicle before putting it on the road and so called mechanical failure is directly attributable to the appellants only.

Relying on the decision of the Hon'ble Supreme Court in S.Kaushnuma Begum and others Vs. The New India Assurance Co. Ltd. : AIR 2001 SC 485, this Court in Ali Khan Vs. Vijay Singh & others : S.B.Civil Misc. appeal No.270/1996 decided on 29.09.2005 has held,-

> "A cause to maintain a claim for compensation arises not merely for rash and negligent driving of a motor vehicle but it arises out of the use of motor vehicle. Driving is one of the uses of motor vehicle and even if the act of driving itself is performed by the driver with all skill and caution, yet if the use of vehicle causes injury to a person or damage to a property, it cannot be said that merely because there was no fault in driving, no cause for compensation arises."

This Court in S.B.Civil Misc. Appeal No.74/1996: RSRTC Vs. Smt.Bhajan Kaur & others, decided on 17.10.2005 rejected a similar defence put by Road Transport Corporation on its bus capsizing during journey for attributing the accident to the malfunctioning of the vehicle in order to avoid its liability. This Court relying on S.Kaushnuma Begum's case (supra) held,-

> "Every vehicle owner, for the very reason of his owning the vehicle and using it on the roads owes a direct duty to keep the vehicle in good repair and to maintain it properly so as to avoid against any mishap by or because of use of the vehicle. When plying a public service vehicle, this duty becomes more onerous. The defects occurring or developing during the journey of a vehicle cannot happen except for some loopholes in proper maintenance. The Corporation is not justified in representing that even when the accident is caused because of malfunctioning of its vehicle, the fault be not attributed to it. Hon'ble Supreme Court applying the principles of strict liability as developed from the rule stated in Rylands v Fletcher, has held in Kaushnuma Begum's case : AIR 2001 SC 485, that,-
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> > "11. It must be noted that the jurisdiction of the Tribunal is not restricted to decide claims arising out of negligence in the use of motor vehicles. Negligence is only one of the species of the causes of action for making a claim for compensation in respect of accidents arising out of the use of motor vehicles. There are other premises for such cause of action."

> Once the strict liability rule is applied, the other species of liability i.e. negligence, ceases to be the prime basis of cause of action and, instead, a person is responsible even for accidental harm even though he is not guilty of either wrongful intent or negligence. The rule of strict liability hits the appellant fair and square when the accident has happened, admittedly for mechanical defect and malfunctioning of its vehicle."

It is not in dispute that in the present case, the jeep in question capsized on turning of the steering and applying of the breaks. The deceased was required to undertake his journey in the vehicle because of his employment with the appellants as Assistant Engineer. The injuries and resultant death of deceased are directly attributable to the appellants and the learned Tribunal has not committed any error in holding the appellants liable.

So far the submission of learned Addl. Government Advocate regarding impropriety and incorrectness in adopting a multiplier of 27 is concerned, this Court is clearly of opinion that though in isolated and numerical sense the multiplier of 27 as adopted by the Tribunal definitely sounds higher and improper; however, the fact remains that the Tribunal has been equally in error in taking the multiplicand on much lower side and not considering the relevant principles applicable for arriving at a figure of just compensation.

The deceased Girish Kumar was 31 years of age and was in settled employment on the post of Assistant Engineer with the appellants and had substantial future prospects available with him. His last drawn salary has been shown at Rs.1892/- and even if last drawn salary is multiplied 1.5 times, to arrive at a reasonable figure of average monthly income with due regard to future prospects, this Court finds that average monthly salary comes to Rs.2838/-; and even if one third from this amount is deducted towards personal expenditure of the deceased, yet an amount of Rs.1892/- comes out to be reasonable figure of dependency of the claimants; and even if a lower side multiplier of 10 is applied in view of other mitigating factors including compassionate appointment accorded to the wife of the deceased, it is apparent that compensation amount even on pecuniary loss would be in the rage of about Rs.2,27,000/-. Further, even if a sum of Rs.15,000/- is allowed towards non-pecuniary compensation, the figure of just compensation appears at about Rs.2.42 lacs. The Tribunal has awarded an amount of Rs.1,92,000/- only. Though interest has been awarded at the rate of 12% per annum but in the award made in the year 1991 the Tribunal has adopted the said interest rate as reasonably applicable and has yet denied interest for

the period of more than 3 years said to have been spent in evidence of the claimants.

Viewed from any angle, the award in question turns out to be rather on the lower side and challenge to the same by the appellants remains baseless and rather unjustified.

The appeal fails and is, therefore, dismissed. No costs.

(DINESH MAHESHWARI),J.

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